

file

BEFORE THE  
STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS

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In the Matter of Whether Land Owned by	)	
American Investment Company, Rusk County,	)	
Town of Richland, and Land Owned by Dean	)	Case No. IH-96-08
Schilling, Rusk County, Town of Richland,	)	
Shall Continue as Forest Cropland	)	

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The Department of Natural Resources on its own motion caused an investigation to be made and requested a hearing to determine whether a parcel of land should continue as forest cropland. The Department alleges that the parcel has been partitioned in a manner not authorized by Chapter 77, Stats. Pursuant to due notice, a hearing was held on October 1, 1996, in Ladysmith, Wisconsin, before Mark J. Kaiser, Administrative Law Judge.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Wisconsin Department of Natural Resources, by

Attorney Dan Graff  
P. O. Box 7921  
Madison, WI 53707-7921

Dean Schilling  
W1731 710th Avenue  
Spring Valley, WI 54767

FINDINGS OF FACT

1. On March 19, 1976, the Department of Natural Resources issued an order entering specified parcels of land owned by Boise Cascade Corporation as forest cropland pursuant to Chapter 77, Stats. Included in the listed parcels is a forty acre parcel with the legal description of the SESE of Section 19, Township 35 North, Range 3 West Town of Richland, Rusk County.

2. On October 3, 1985, Boise Cascade Corporation conveyed land in Rusk County including the subject forty acre parcel to the American Investment Company. On February 19, 1995, the American Investment Company conveyed ten acres of the subject

parcel to Jonathan Tack and Charles Metcalf. The legal description of the ten acres is as follows:

The East 1/4 of the Southeast 1/4 of the Southeast 1/4 of Section 19, Township 35 North, Range 3 West, Richland Township, Rusk County, Wisconsin.

3. On July 26, 1995, Jonathan Tack and Charles Metcalf conveyed the ten acre parcel to Dean Schilling. Mr. Schilling subsequently contacted the Department of Natural Resources (Department) for a cutting notice for timber harvest on the subject parcel. As a result of the request of Mr. Schilling, the Department became aware of the fact that the quarter section had been partitioned.

4. Section 77.02(1), Stats., provides that only an "owner of an entire quarter quarter section, fractional lot or government lot" may be approved as "Forest Croplands." (The terms "fractional lot" and "government lot" are defined at secs. NR 46.02(7) and (8), Wis. Adm. Code, respectively and are not applicable to this case.) Upon the transfer of ten acres of the quarter section to Jonathan Tack and Charles Metcalf, the SESE of Section 19, Township 35 North, Range 3 West Town of Richland, Rusk County could not continue as forest cropland. As the current owner of the ten acre parcel, Dean Schilling is responsible for the withdrawal fee and any penalties imposed as a result of the withdrawal of that parcel from forest cropland.

#### CONCLUSIONS OF LAW

1. Pursuant to sec. 77.02(1), Stats., to place land into forest cropland an owner must own an entire quarter section of land. When American Investment Company conveyed a portion of the subject quarter section to Jonathan Tack and Charles Metcalf, that parcel lost its eligibility for forest cropland.

2. The Division of Hearings and Appeals has authority to hear contested cases and enter necessary orders relating to withdrawal of forest croplands pursuant to sec. 227.43(1)(b) and 77.02, Stats.

#### ORDER

IT IS HEREBY ORDERED that pursuant to the foregoing Findings of Fact and Conclusions of Law, the lands described above owned by Dean Schilling is withdrawn from entry under the Forest Crop Law.

IT IS FURTHER ORDERED that the tax due by the owner (as determined by the Wisconsin Department of Revenue) and interest thereon shall be paid to the Department of Natural Resources pursuant to sec. 77.10(1)(a), Stats.

IT IS FURTHER ORDERED that a copy of this order be transmitted by the Department of Natural Resources to the Wisconsin Department of Revenue, to the Clerk of the Town of Richland, to the Register of Deeds of Rusk County and the Supervisor of Assessments of the property tax assessment district wherein the land is located.

Dated at Madison, Wisconsin on October 23, 1996.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705  
Telephone: (608) 266-7709  
FAX: (608) 267-2744

By Mark J. Kaiser  
MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

## NOTICE

Set out below is a list of alternative methods available to persons who may desire to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any party to this proceeding adversely affected by the decision attached hereto has the right within twenty (20) days after entry of the decision, to petition the secretary of the Department of Natural Resources for review of the decision as provided by Wisconsin Administrative Code NR 2.20. A petition for review under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

2. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Natural Resources a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.

3. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefor in accordance with the provisions of sec. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (2) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Since the decision of the Administrative Law Judge in the attached order is by law a decision of the Department of Natural Resources, any petition for judicial review shall name the Department of Natural Resources as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.